

AMENDED IN SENATE JULY 16, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1299

Introduced by Assembly Member Ridley-Thomas

February 27, 2015

An act to *amend Section 14714 of, and to add Article 6 (commencing with Section 14695.1) to Chapter 8.8 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to Medi-Cal.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1299, as amended, Ridley-Thomas. Medi-Cal: specialty mental health services: foster children.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law provides that Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for any individual under 21 years of age is covered under Medi-Cal, consistent with the requirements of federal law. Federal law defines EPSDT mental health services to include screening services, vision services, dental services, hearing services, and other necessary services to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not the services are covered under the state plan. EPSDT is classified under the Medi-Cal program as a specialty mental health service.

Existing law requires each local mental health plan to establish a procedure to ensure access to outpatient specialty mental health services, as required by the EPSDT program standards, for children in foster care who have been placed outside their county of adjudication. Existing law includes standardized contracts, procedures, documents, and forms, to facilitate the receipt of medically necessary specialty mental health services by a foster child who is placed outside his or her county of original jurisdiction.

This bill would declare the intent of the Legislature to ensure that foster children who are placed outside of their county of original jurisdiction, are able to access mental health services in a timely manner consistent with their individualized strengths and needs and the requirements of EPSDT program standards and requirements. The bill would require the department to issue policy guidance that establishes the *conditions for and exceptions to* presumptive transfer of responsibility for providing or arranging for mental health services to foster youth from the county of original jurisdiction to the *county in which the foster child's county of residence, child resides*, as prescribed. The bill would define presumptive transfer for these purposes. *The bill would authorize the person or agency that is responsible for making health care decisions on behalf of the foster child to waive the presumptive transfer if specified conditions occur, including when a determination is made that the transfer of mental health services would disrupt continuity of care or timely access to services, as specified. The bill would require the mental health plan in the host county to assume responsibility for the authorization and provision of mental health services, and payments for services, upon the presumptive transfer. The bill would require the department, no later than July 1, 2016, to amend its contract with each mental health plan to ensure that the mental health plan in the host county is reimbursed for mental health services provided within the fiscal year in which services are provided.*

~~This bill would require the Department of Finance, by May 1, 2016, to set or adjust its allocation schedule of the Behavioral Health Subaccount pursuant to realignment provisions enacted pursuant to a specified measure, in order that counties that have paid, or will pay, for the specialty mental health services provided pursuant to the bill, are fully reimbursed during the fiscal year in which the services were provided. This bill would require the department to determine whether it is necessary to seek approval under the state's Section 1915(b) Medicaid waiver from the federal Centers for Medicare and Medicaid~~

Services (CMS) prior to implementing the bill, and if so, to do everything within its power necessary to secure an expeditious approval.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 6 (commencing with Section 14695.1) is
2 added to Chapter 8.8 of Part 3 of Division 9 of the Welfare and
3 Institutions Code, to read:

4
5 Article 6. Specialty Mental Health Services for Foster Children

6
7 14695.1. (a) (1) It is the intent of the Legislature to ensure
8 that foster children who are placed outside of their county of
9 original jurisdiction, are able to access mental health services in
10 a timely manner, consistent with their individualized strengths and
11 needs and the requirements of Early Periodic Screening Diagnosis
12 and Treatment (EPSDT) program standards and requirements.

13 (2) It is the further intent of the Legislature to overcome the
14 barriers to care that exist under existing law, which place
15 responsibility for providing or arranging for mental health services
16 to foster children who are placed outside of their county of original
17 jurisdiction, on those same counties.

18 (b) In order to facilitate the receipt of medically necessary
19 specialty mental health services by a foster child who is placed
20 outside of his or her county of original jurisdiction, the California
21 Health and Human Services Agency shall coordinate with the
22 department and the State Department of Social Services to take
23 all of the following actions:

24 (1) On or before July 1, 2016, all of the following shall occur:

25 (A) The department shall issue policy guidance, pursuant to
26 Section 14716, that establishes the *conditions for and exceptions*
27 *to, as described in subdivision (d)*, presumptive transfer of
28 responsibility for providing or arranging for mental health services
29 to foster youth, consistent with the requirements of EPSDT
30 program standards and requirements, from the county of original
31 jurisdiction to the *county in which the foster child's county of*
32 ~~residence.~~ *child resides.*

(B) The department shall establish the conditions and exceptions *policy guidance* to presumptive transfer *and exceptions* in consultation with the State Department of Social Services, and with the input of stakeholders that include the County Welfare Directors Association of California, the County Behavioral Health Directors Association of California, provider representatives, and family and youth advocates. The conditions and exceptions to presumptive transfer are intended to ensure that the transfer of responsibility improves access to mental health care services and does not impede the continuity of existing care.

(C) The department shall establish the procedures for implementing presumptive transfer that are consistent with the purposes and intent of this section and Early Periodic Screening Diagnosis and Treatment program standards and requirements, and shall include a procedure for expedited transfer within 48 hours.

(c) “Presumptive transfer” for the purposes of this section, means that absent any conditions or exceptions as established pursuant to this article, responsibility for providing or arranging for mental health services shall immediately transfer from the county of original jurisdiction to the county of residence, ~~when all of the following conditions occur: county in which the foster child resides, under any of the following conditions:~~

(1) A foster child is placed in a county other than the county of original jurisdiction.

~~(2) The transfer of responsibility is requested by the county child welfare services agency, county probation department, foster caregiver, or any other person authorized to make medical decisions on behalf of the foster child.~~

(2) *A foster child who resides in a county other than the county of original jurisdiction is not receiving mental health services consistent with his or her treatment plan and the child’s caregiver who is responsible for making health care decisions on behalf of the foster child, in consultation with the county probation or county child welfare services agency with responsibility for the care and placement of the child, or the Child and Family Team, if one exists, requests transfer of responsibility under this article.*

(d) *Consistent with the conditions and exceptions to presumptive transfer established under this article, the person or agency that is responsible for making health care decisions on behalf of the*

1 *foster child, in consultation with the Child and Family Team, if*
2 *one exists, may waive the presumptive transfer, in which case the*
3 *responsibility for the provision of mental health services shall*
4 *remain with the county of original jurisdiction.*

5 *(1) (A) On a case-by-case basis, the presumptive transfer may*
6 *be waived and the responsibility for the provision of mental health*
7 *services shall remain with the county of original jurisdiction if*
8 *any of the following conditions described in this paragraph occur.*
9 *These exceptions to presumptive transfer may include, but are not*
10 *limited to, any of the following:*

11 *(i) It is determined that the transfer of services would disrupt*
12 *continuity of care or timely access to services provided to the foster*
13 *child, as described in paragraph (2).*

14 *(ii) It is determined that the transfer of services would interfere*
15 *with family reunification efforts.*

16 *(iii) The foster child's placement in a county other than the*
17 *county of original jurisdiction is expected to last less than nine*
18 *months.*

19 *(B) These exceptions shall be documented in the foster child's*
20 *case plan pursuant to Section 16501.1.*

21 *(2) Exceptions to the presumptive transfer shall be contingent*
22 *upon the mental health plan in the county of original jurisdiction*
23 *demonstrating an existing contract with a foster care provider, or*
24 *the ability to enter into a contract within 30 days of the exception*
25 *decision, and the ability to deliver timely services directly to the*
26 *foster child. This shall be documented in the child's case plan.*

27 *(e) If the mental health plan in the county of original jurisdiction*
28 *has completed an assessment of needed services for the foster*
29 *child, the mental health plan in the host county shall accept that*
30 *assessment. The mental health plan in the host county may conduct*
31 *additional assessments if the foster child's needs change.*

32 *(f) Upon presumptive transfer, the mental health plan in the*
33 *host county shall assume responsibility for the authorization and*
34 *provision of mental health services, and payments for services.*

35 *(g) The department, in consultation with counties and through*
36 *any administrative means within existing authority, shall amend*
37 *its contract with each mental health plan no later than July 1,*
38 *2016, to ensure that a mental health plan in a host county is*
39 *reimbursed for services provided pursuant to this article during*
40 *the fiscal year in which the services are provided.*

~~14695.2. By May 1, 2016, the Department of Finance shall set or adjust its allocation schedule of the Behavioral Health Subaccount pursuant to the requirements of Senate Bill 1020 (Chapter 40, Statutes of 2012), in order that counties that have paid, or will pay, for specialty mental health services for foster children placed out of county pursuant to this article, are fully reimbursed during the fiscal year in which the services are provided.~~

~~14695.3.~~

14695.2. (a) If the department determines it is necessary, it shall seek approval under the state's Section 1915(b) Medicaid waiver from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) prior to implementing this article.

(b) If the department makes the determination that it is necessary to seek CMS approval pursuant to subdivision (a), the department shall make an official request for approval from CMS no later than July 1, 2016, and shall do everything within its power necessary to secure an expeditious approval from CMS.

(c) The department shall not be required to implement any provision of this article that CMS determines is not permitted under the state's waiver.

SEC. 2. Section 14714 of the Welfare and Institutions Code is amended to read:

14714. (a) (1) Except as otherwise specified in this chapter, a contract entered into pursuant to this chapter shall include a provision that the mental health plan contractor shall bear the financial risk for the cost of providing medically necessary specialty mental health services to Medi-Cal beneficiaries.

(2) If the mental health plan is not administered by a county, the mental health plan shall not transfer the obligation for any specialty mental health services to Medi-Cal beneficiaries to the county. The mental health plan may purchase services from the county. The mental health plan shall establish mutually agreed-upon protocols with the county that clearly establish conditions under which beneficiaries may obtain non-Medi-Cal reimbursable services from the county. Additionally, the plan shall establish mutually agreed-upon protocols with the county for the conditions of transfer of beneficiaries who have lost Medi-Cal eligibility to the county for care under Part 2 (commencing with

1 Section 5600), Part 3 (commencing with Section 5800), and Part
2 4 (commencing with Section 5850) of Division 5.

3 (3) The mental health plan shall be financially responsible for
4 ensuring access and a minimum required scope of benefits and
5 services, consistent with state and federal requirements, to
6 Medi-Cal beneficiaries who are residents of that county regardless
7 of where the beneficiary ~~resides~~; *resides, except as provided for*
8 *in, and consistent with, Section 14695.1*. The department shall
9 require that the same definition of medical necessity be used, and
10 the minimum scope of benefits offered by each mental health plan
11 be the same, except to the extent that prior federal approval is
12 received and is consistent with state and federal laws.

13 (b) (1) Any contract entered into pursuant to this chapter may
14 be renewed if the mental health plan continues to meet the
15 requirements of this chapter, regulations promulgated pursuant
16 thereto, and the terms and conditions of the contract. Failure to
17 meet these requirements shall be cause for nonrenewal of the
18 contract. The department may base the decision to renew on timely
19 completion of a mutually agreed-upon plan of correction of any
20 deficiencies, submissions of required information in a timely
21 manner, or other conditions of the contract.

22 (2) In the event the contract is not renewed based on the reasons
23 specified in paragraph (1), the department shall notify the
24 Department of Finance, the fiscal and policy committees of the
25 Legislature, and the Controller of the amounts to be sequestered
26 from the Mental Health Subaccount, the Mental Health Equity
27 Account, and the Vehicle License Fee Collection Account of the
28 Local Revenue Fund and the Mental Health Account and the
29 Behavioral Health Subaccount of the Local Revenue Fund 2011,
30 and the Controller shall sequester those funds in the Behavioral
31 Health Subaccount pursuant to Section 30027.10 of the
32 Government Code. Upon this sequestration, the department shall
33 use the funds in accordance with the provisions of Section
34 30027.10 of the Government Code.

35 (c) (1) The obligations of the mental health plan shall be
36 changed only by contract or contract amendment.

37 (2) Notwithstanding paragraph (1), the mental health plan shall
38 comply with federal and state requirements, including the
39 applicable sections of the state plan and waiver.

1 (3) A change may be made during a contract term or at the time
2 of contract renewal, when there is a change in obligations required
3 by federal or state law or when required by a change in the
4 interpretation or implementation of any law or regulation.

5 (4) To the extent permitted by federal law, either the department
6 or the mental health plan may request that contract negotiations
7 be reopened during the course of a contract due to substantial
8 changes in the cost of covered benefits that result from an
9 unanticipated event.

10 (d) The department shall immediately terminate a contract when
11 the director finds that there is an immediate threat to the health
12 and safety of Medi-Cal beneficiaries. Termination of the contract
13 for other reasons shall be subject to reasonable notice of the
14 department's intent to take that action and notification to affected
15 beneficiaries. The plan may request a hearing by the Office of
16 Administrative Hearings and Appeals.

17 (e) A mental health plan may terminate its contract in accordance
18 with the provisions in the contract. The mental health plan shall
19 provide written notice to the department at least 180 days prior to
20 the termination or nonrenewal of the contract.

21 (f) Upon the request of the director, the Director of the
22 Department of Managed Health Care may exempt a mental health
23 plan from the Knox-Keene Health Care Service Plan Act of 1975
24 (Chapter 2.2 (commencing with Section 1340) of Division 2 of
25 the Health and Safety Code). These exemptions may be subject to
26 conditions the director deems appropriate. Nothing in this chapter
27 shall be construed to impair or diminish the authority of the
28 Director of the Department of Managed Health Care under the
29 Knox-Keene Health Care Service Plan Act of 1975, nor shall
30 anything in this chapter be construed to reduce or otherwise limit
31 the obligation of a mental health plan contractor licensed as a
32 health care service plan to comply with the requirements of the
33 Knox-Keene Health Care Service Plan Act of 1975, and the rules
34 of the Director of the Department of Managed Health Care
35 promulgated thereunder. The director, in consultation with the
36 Director of the Department of Managed Health Care, shall analyze
37 the appropriateness of licensure or application of applicable
38 standards of the Knox-Keene Health Care Service Plan Act of
39 1975.

1 (g) The department shall provide oversight to the mental health
2 plans to ensure quality, access, cost efficiency, and compliance
3 with data and reporting requirements. At a minimum, the
4 department shall, through a method independent of any agency of
5 the mental health plan contractor, monitor the level and quality of
6 services provided, expenditures pursuant to the contract, and
7 conformity with federal and state law.

8 (h) County employees implementing or administering a mental
9 health plan act in a discretionary capacity when they determine
10 whether or not to admit a person for care or to provide any level
11 of care pursuant to this chapter.

12 (i) If a county discontinues operations as the mental health plan,
13 the department shall approve any new mental health plan. The new
14 mental health plan shall give reasonable consideration to affiliation
15 with nonprofit community mental health agencies that were under
16 contract with the county and that meet the mental health plan's
17 quality and cost efficiency standards.

18 (j) Nothing in this chapter shall be construed to modify, alter,
19 or increase the obligations of counties as otherwise limited and
20 defined in Chapter 3 (commencing with Section 5700) of Part 2
21 of Division 5. The county's maximum obligation for services to
22 persons not eligible for Medi-Cal shall be no more than the amount
23 of funds remaining in the mental health subaccount pursuant to
24 Sections 17600, 17601, 17604, 17605, and 17609 after fulfilling
25 the Medi-Cal contract obligations.

O